

CHAPTER 1

PURPOSE AND NEED FOR ACTION

On August 30, 2001, San Jacinto Rail Limited (SJRL)¹ and The Burlington Northern and Santa Fe Railway (BNSF) (collectively the Applicants) filed a petition with the Surface Transportation Board (Board)² pursuant to 49 United States Code (U.S.C.) 10502 for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. In the petition, the Applicants proposed the construction of approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop).

The Board, pursuant to 49 U.S.C. 10901, is the agency responsible for granting authority for the construction, operation, and maintenance of new rail line facilities. Accordingly, the Board, through its Section of Environmental Analysis (SEA), is the lead agency responsible under the National Environmental Policy Act (NEPA) for the preparation of this Draft Environmental Impact Statement (EIS), which identifies and evaluates the potential environmental impacts associated with the Proposed Action and Alternatives. The U.S. Coast Guard (USCG), the Federal Aviation Administration (FAA), and the National Aeronautics and Space Administration (NASA) are cooperating agencies, pursuant to 40 Code of Federal Regulations (CFR) 1501.6. SEA and the cooperating agencies (collectively the Agencies) prepared this Draft EIS³ in accordance with NEPA, the Council on Environmental Quality (CEQ) regulations, and the Board's environmental regulations (found at 49 CFR 1105) to provide the Board, the cooperating agencies, other Federal, state and local agencies, Native American Tribes, and the public with clear and concise information on the potential environmental impacts of the Proposed Action and reasonable and feasible Alternatives, including the No-Action Alternative. This Draft EIS was also prepared in accordance with FAA Order 5050.4A, Airport Environmental Handbook; FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts; USCG COMDTINST M16475.1D, NEPA Implementing Procedures and Policy for Considering

¹ SJRL is a partnership, based in Delaware, comprised of BNSF, BayRail, LLC (wholly owned by BNSF), and affiliates of four plastics and chemical production companies located in the Bayport Loop. The four production companies are: ATOFINA Petro-chemicals, Inc., Basell USA, Inc., Equistar Chemicals, LP, and Lyondell Chemical Company. The affiliated limited partners of SJRL are Bay Junction, Inc. (wholly owned by ATOFINA), Basell Impact Holding Company, Equistar Bayport, LLC, and Lyondell Bayport, LLC.

² The Surface Transportation Board is a bipartisan, decisionally independent adjudicatory body, organizationally housed within the U.S. Department of Transportation. The Surface Transportation Board was established by the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. 10101 *et seq.*; P.L. 104-88, December 29, 1995) to assume some of the regulatory functions that the Interstate Commerce Commission administered. The Surface Transportation Board has jurisdiction over rail rates, railroad acquisitions and consolidations, rail constructions, and abandonments of rail service. Other functions of the Interstate Commerce Commission were either eliminated or transferred to different agencies within the Department of Transportation.

³ While much of the Draft EIS for convenience generally refers only to SEA, the document reflects the input of the three cooperating agencies.

Environmental Impacts; and NASA NPG 8580.1, Implementing NEPA and Executive Order 12114.

The Agencies are issuing this Draft EIS for public review and comment. In preparing the Final EIS the Agencies will consider all comments received and respond to all substantive comments. The Final EIS will include the Agencies' final recommended environmental mitigation conditions, as applicable. The Board will consider the entire environmental record, the Draft and Final EIS, all public and agency comments, and SEA's environmental recommendations in making its final decision on the application to construct and operate the proposed Bayport Loop Build-Out. The Board will decide whether to approve, approve with conditions (which could include conditions designed to mitigate impacts to the environment), or deny the Proposed Action. The USCG will decide whether to issue a bridge permit. If requested, the FAA would decide whether to approve a change to the Ellington Field Airport Layout Plan (ALP) to allow the Proposed Action to cross two edges of the airport and to release the affected airport property from surplus property restrictions and/or the airport owner's obligations under grant assurances contained in grant agreements. NASA will decide whether to grant an easement for the Proposed Action and one other Alternative to cross NASA's access road between the Sonny Carter Training Facility and Ellington Field.

1.1 BACKGROUND

The existing Bayport Loop rail system was acquired by Union Pacific Railroad Company (UP) during its merger with the Southern Pacific Rail Corporation (SP) in 1996. In the final decision and as a condition of the merger approval, the Board used its authority to grant BNSF trackage rights over certain UP and SP rail lines to the extent required to replicate the competition that was lost when SP was absorbed into UP in the merger.⁴ The Board's decision included a provision that trackage rights would be granted to BNSF to ensure access to a competitive build-in or build-out. The Board explained in its decision that a shipper need not demonstrate economic feasibility of a build-in or build-out proposal. In this particular situation, the Board's decision allows BNSF to take UP's position prior to the merger, because UP had the opportunity to provide competitive access to the Bayport Loop.

Before the UP/SP merger, the Bayport Loop was served solely by SP. UP owned and operated the former Galveston, Henderson, and Houston Railroad (GH&H) line, adjacent to Ellington Field, and had an opportunity to apply to the Board for permission to construct a new line into the Bayport Loop to compete with SP. When the two companies merged in 1996 this potential competitive option would have been eliminated but for the merger condition discussed above. Through the Proposed Action, the Applicants are seeking approval to create the competitive situation provided for by the Board's condition, by utilizing trackage rights over the existing GH&H line and constructing a new rail line from the GH&H line into the Bayport Loop.

The Bayport Loop is located in an industrial area southeast of Houston near Galveston Bay. It is served by a series of rail tracks that form a loop, hence the name Bayport Loop. The Bayport Loop is at the center of a chemical and plastics production area, which contains facilities

⁴ Union Pacific/Southern Pacific Merger, 1 STB 233 (1996).

operated by numerous domestic and international petro-chemical producers. These facilities rely heavily on rail transportation to move their products to market. The producers maintain fleets of special-purpose hopper and tank rail cars to transport their products, and many use these cars to store products prior to their transportation to customers. Use of the cars for pre-delivery storage, also known as storage-in-transit, reduces the need to construct Alternative storage facilities and reduces time and costs associated with product handling at the production facility. Any disruption in rail service can cause corresponding disruptions in storage capacity and production rates at the producers' facilities and disruptions in the business of the producers and their customers.

The Applicants have indicated that the producers seek to meet the inventory requirements of their customers by providing a consistent and timely delivery schedule to ensure optimum inventory levels at customer facilities. The producers also seek to deliver their products at a competitive transportation price. Access to efficient, reliable, and competitive transportation service is vital to meet the producers' business needs. Currently, the producers in the Bayport Loop are served by only one rail carrier, UP. Other rail carriers, including BNSF, do not have trackage rights over the UP line into the Bayport Loop. As applied to the Bayport Loop, the Board's decision in the UP/SP merger case directs UP and BNSF to negotiate terms for build-in or build-out arrangements from or to a pre-merger UP line and does not direct the parties to negotiate trackage rights over UP's Strang Subdivision (which was an SP line prior to the merger) because the Bayport Loop was exclusively served by SP prior to the merger. In general, the Board grants trackage rights in merger proceedings to preserve competition and when railroads apply to the Board to allow another railroad to have trackage rights on its lines. Railroads using trackage rights have to pay the railroad that owns the rail line for such use.

In the summer and fall of 1997, prior to UP's full implementation of the merger in Texas, UP and SP lines in and around Houston became severely congested, leading to a lengthy and damaging service breakdown that dramatically affected rail transportation throughout the western United States. UP had already begun to manage SP operations in Texas when the rail congestion that led to the crisis began to develop. The service crisis brought significant delays and substantial economic impact to the producers operating in the Bayport Loop. The Board concluded that the service crisis was caused by the aging Houston infrastructure, which was inefficiently configured, lacking in capacity, and, particularly in the case of the former SP lines and facilities, in disrepair or inadequate to cope with unanticipated surges in demand.⁵

1.2 PURPOSE OF PROPOSED ACTION

The purpose of the proposed construction and operation of a new rail line into the Bayport Loop is to provide competitive rail service to the shippers located within the Loop. The Applicants have stated that, initially, this service would be offered to the facilities owned by ATOFINA, Basell, Equistar, and Lyondell and in the future could be offered to a number of other facilities within the Loop. The Applicants have also stated that the proposed new line would add capacity and infrastructure to the Houston area, would provide shippers with access to BNSF's extensive

⁵ STB Service Order No. 1518, February 17, 1998 and STB Finance Docket No.32760 (Sub-No.26), Decision No. 10, December 18, 1998.

single line service, and would provide shippers with flexibility and Alternative transportation routes in the event of future service disruptions.

1.3 NEED FOR PROPOSED ACTION

The Applicants have stated that the need for the Proposed Action is to provide reliable and competitive rail transportation service to the shippers in the Bayport Loop.

The Applicants have stated that rail service is vital to chemicals and plastics production, distribution, and inventory management. Production at the facilities in the Bayport Loop is closely tied to available rail capacity and the ability to transport products to market. The Applicants have stated that the chemicals and plastics producers in the Bayport Loop are constrained by the lack of a reliable and economically competitive transport infrastructure, because the existence of only one rail service option. Access to additional rail capacity, through the construction and operation of the proposed rail line, would allow shippers more freedom of choice and help prevent the kind of rail shipping gridlock that occurred in 1997 and 1998. The Applicants have stated that the proposed new rail line is needed to alleviate the constraints currently experienced by shippers and to provide an effective replacement for pre-merger competitive conditions.

The Applicants have stated that a significant portion of the production costs of chemicals and plastics is associated with transportation and distribution. The proposed rail line would introduce additional transportation capacity and competition to the Bayport Loop and potentially bring a significant reduction in the cost of transportation for the shippers. The Applicants have stated that lowering transportation costs would allow the producers in the Bayport Loop to improve the economic health of their businesses and enable them to compete favorably in the domestic and international marketplaces.

1.4 PROPOSED ACTION

The Proposed Action is the construction and operation of a new rail line from the Bayport Loop to an existing rail line that would allow the Applicants to provide competitive rail service to the petro-chemical industries in the Bayport Loop. Implementation of the Proposed Action would result in rail operations to and from the new line over trackage rights on UP's GH&H line and UP's East Belt, Terminal, Lafayette, and Baytown Subdivisions to the storage yard owned by CMC Railroad at Dayton, approximately 30 miles northeast of Houston. Beyond Dayton Yard, the Bayport traffic would be dispersed over a larger number of existing trains to destinations around the country. The Applicants had originally indicated that they would route the Bayport Loop traffic over the GH&H line and UP's Glidden Subdivision to BNSF's New South Yard. On August 6, 2002, the Applicants advised SEA that they proposed as voluntary mitigation to route the Bayport Loop traffic to the CMC Dayton Yard instead of New South Yard in response to concerns raised by the communities in and around New South Yard regarding existing congestion. The letter from the Applicants regarding the re-routing is contained in Appendix N. Through the Notice of Availability for this Draft EIS, SEA notified Federal, state, and local officials and placed notices in newspapers to describe the Proposed Action to those affected by the new route. During the scoping period the Applicants' preferred route for the new rail line

was referred to as Alignment 1 and the Applicants identified it in their petition for exemption, filed with the Board on August 30, 2001. The new rail line would be approximately 12.8 miles long. During the scoping period the Applicants stated that their preferred Alternative should be altered to include Alignment 1B, which follows Port Road across Taylor Bayou. The Proposed Action includes this combination of Alignment 1 and 1B, which is the Applicants' preferred Alternative. The Proposed Action is shown in Figure 1.4-1. Detailed descriptions of the Proposed Action and Alternatives are provided in Chapter 2.

The expected level of activity on the proposed line would vary, depending on BNSF's marketing success with the shippers in the Bayport Loop. BNSF has explained in its application that it anticipates that it would run, on average, one train of approximately 36 to 66 cars per day in each direction (for a daily total of two trains and 72 to 132 rail cars). This would be an annual total of 13,000 to 24,000 carloads (loaded rail cars) operating on the proposed line and an equal number of empty rail cars. This represents approximately 28 to 51 percent of the rail traffic generated in the Bayport Loop, according to the Board's waybill sample. The waybill sample is discussed further in Section 2.2.2.2, Proposed Action Operations. The majority of the shipments would consist of non-hazardous plastic pellets, transported in hopper cars. The remainder would consist of chemicals, transported in tank cars. At current BNSF estimates, approximately 1,500 to 7,000 carloads of hazardous materials would be transported over the line per year. Other miscellaneous inbound and outbound commodities are also likely to be transported.

1.5 PROJECT CONTEXT

The context for this project includes other proposed or potential projects, a variety of land uses in close proximity to each other, and other issues. The following is a discussion of that context to provide further background.

There is substantial public controversy over the Port of Houston Authority's (PHA) proposed Bayport Channel Container/Cruise Terminal (Bayport Terminal), which, if approved, would be constructed in close proximity to part of the Bayport Loop Build-Out. There is a perception that the eight trains per day from the Bayport Terminal, which are estimated to begin after 2012, would use the Bayport Loop rather than the proposed new Port Terminal Railroad Association (PTRA) line. SEA and the U.S. Army Corp of Engineers (USACE) have concluded that the two proposed projects are not connected (see Section 2.2.2). However, the public interest in the proposed Bayport Terminal and the perception that the projects are connected has promoted increased public interest in the Bayport Loop Build-Out.

Many people were already organized against the Bayport Terminal Project and, based on the perception that the projects were connected, several hundred sent comments to SEA before the start of the scoping period. From the outset of the project to present, SEA has received over 1,000 comments from citizens, Federal, state and local agencies, elected officials, and environmental and community groups. While several hundred comments were in favor of the project, the majority were opposed. In addition, on Wednesday, March 6, 2002, the Houston City Council unanimously passed a resolution opposing the construction and operation of the proposed line along the routes proposed at that time.

**Figure 1.4-1
Proposed Action**

The Board's regulations, found at 49 CFR 1105.7, provide thresholds for analysis of potential environmental impacts based on predicted rail traffic levels under a proposed action. The projected traffic levels of two trains per day from the proposed Bayport Loop Build-Out do not exceed these thresholds and, under typical circumstances, SEA would not analyze air quality and noise impacts in detail.⁶ Similarly, for a project with low rail traffic volumes, SEA usually would not analyze other rail operations-related impacts in detail (e.g., rail operations, rail operations safety, and grade crossing delay and safety at existing highway-rail at-grade crossings). SEA would usually focus on the construction-related impacts (e.g., water quality, biology, historic and archaeological resources). Nevertheless, given the level of public interest in this project and its limited geographic scope, SEA has decided to analyze the operations-related areas in detail.

Analyzing impacts of rail operations involves understanding baseline rail traffic. Determining the baseline rail traffic in a complex rail center like Houston is challenging. In this case, the existing rail lines involved in this project are all owned by UP, which is not a party to the Applicants' petition. Although SEA may request rail traffic data from non-applicant railroads such as UP, in this case, non-applicant railroads are under no obligation to provide this information and SEA rarely takes this action. Therefore, to characterize baseline rail traffic, SEA initially used a combination of other data sources, including the Board's waybill sample, field observations, Texas Department of Transportation (TxDOT) data, and UP filings with the Board. Ultimately, SEA did request rail traffic data from UP, in a letter dated September 6, 2002, to ensure that the EIS contains the best information available. UP responded to the request with a concerted effort to determine representative rail operations data. The Applicants indicated that UP's estimates of BNSF traffic on the relevant lines were reasonable. After reviewing the other sources of rail traffic and consulting with UP on their approach to determining a representative baseline, SEA used the UP data and supplemented it as necessary. Considering the variability in traffic indicated by several sources of information and given the challenges of determining baseline traffic, the proposed increase of two trains per day on average is likely partially or completely within the margin of error for the estimate of the baseline traffic. However, with a small increase in rail traffic, shifting the baseline traffic up or down generally has little, if any, effect on the outcome of the impacts analysis.

Predicting future average daily rail traffic in the Houston area is challenging because the Houston area is one of the busiest and most complex rail centers in the country. Railroad dispatchers route traffic over different lines on a daily basis to address varying conditions and railroads plan shifts in routes to achieve better transit times. For many of the lines in Houston, one to three other railroads may use these lines through trackage rights. Therefore, future traffic on those lines depends on the plans of several different railroads. They may increase or decrease their use of those lines.

⁶ Rail operation data dated November 7, 2002, indicate a lower baseline traffic than previously available data. With a baseline of 3.4 trains, an increase of two trains per day on average would constitute a 50 percent increase in gross ton miles. However, the Proposed Action would shift the traffic within the same non-attainment area.

The Proposed Action and all of the Alternatives require the Applicants to use trackage rights over UP's lines in order to reach the build-out. While permissible and contemplated by the Board in the UP/SP merger decision, most railroad build-out cases analyzed by SEA have not involved the use of trackage rights, but have involved build-outs to the applicant's own lines.

In addition to the Proposed Action, the EIS analyzes several Build Alternatives. The Build Alternatives are those Alternatives that would require new rail line construction, in addition to trackage rights to allow operations over UP lines. All of the Build Alternatives would utilize trackage rights that BNSF either has already or can obtain through the Board's UP/SP merger decision (i.e., the UP's GH&H line).

In response to public comments, SEA analyzed a No-Build Alternative in this proceeding. That Alternative would require the Applicants to obtain trackage rights from UP for the Strang Subdivision which they do not currently hold and cannot obtain under the Board's UP/SP merger decision. The No-Build Alternative involves BNSF operating over existing UP lines from the CMC Dayton Yard to the Bayport Loop. The No-Build Alternative, which is described in detail in Section 2.2.6, would not require any new rail line construction. SEA is analyzing this unusual Alternative in response to public scoping comments and because, for a brief period in early 2002, BNSF engaged UP in an exchange of letters regarding access over the Strang Subdivision. The exchange did not result in any agreement to allow access. Although the Board cannot force UP to permit BNSF to operate over the Strang Subdivision, the NEPA regulations require agencies to consider Alternatives in their environmental review process that may be outside their jurisdiction (40 CFR 1502.14(c)).

Under the No-Action Alternative, the Applicants would not gain rail access to the Bayport Loop, either by new construction or trackage rights. The No-Action Alternative is described in detail in Section 2.2.7.

The proposed Bayport Loop Build-Out is designed to gain access to a large petro-chemical complex that contains at least 24 major production facilities. Other build-out projects that SEA has analyzed have typically involved access to a single facility or a small number of facilities. In addition, the project area for the proposed rail line contains a number of land uses in close proximity to each other, including an airport with commercial, general aviation, military, and NASA operations, a one-of-a-kind NASA training facility, a water treatment plant, an active gas field, numerous pipelines, areas of natural habitat, residential areas, and the major petro-chemical complex that the Applicants propose to access.

1.6 AGENCY RESPONSIBILITIES

The Federal agencies' actions considered in this Draft EIS will include decisions by the Board and each of the three cooperating agencies. The Board, USCG, and NASA will be issuing decisions concerning the Proposed Action and Alternatives using this EIS for the disclosure and analysis of potential environmental impacts, as required by NEPA. The FAA may issue a decision concerning the Proposed Action depending on whether the FAA has a major Federal action as explained below. Additional Federal agencies have review or oversight responsibilities

related to the Draft EIS and other components of the environmental process. These agencies and their responsibilities are discussed below.

1.6.1 Lead Agency

Surface Transportation Board

The Board, pursuant to 49 U.S.C. 10901, is the agency responsible for granting authority for the construction of new rail line facilities and their subsequent operation and maintenance. Accordingly, the Board, through SEA, is the lead agency responsible for supervising the preparation of the EIS.

Consistent with its jurisdiction under the Interstate Commerce Commission (ICC) Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, 49 U.S.C. 10101 *et seq.*, the Board published its Notice of Intent to Prepare an EIS in the *Federal Register* on October 1, 2001. The Board published the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments on November 26, 2001. The scoping comment period was originally designated to conclude on February 1, 2002. However, on February 13, 2002, the Board published a Notice to Extend the Scoping period by an additional 30 days, to March 14, 2002. The USCG, FAA, and NASA are participating in the EIS as cooperating agencies.

1.6.2 Cooperating Agencies

U.S. Coast Guard

The USCG indicated its intent to participate as a cooperating agency for the preparation of this EIS on April 17, 2002. The USCG, under the General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525, *et seq.*) and the Department of Transportation Act of 1966, Pub.L.No. 89-670, 80 Stat. 931-950; 49 U.S.C. 1651-1659, is provided authority for approval of bridges over navigable waters of the United States. The USCG has a responsibility to assess the navigational and environmental impacts of the construction, maintenance, and operation of the proposed bridges associated with the Proposed Action and Alternatives. This assessment will form a component of the Agency's review of whether or not to issue a bridge permit under Section 9 of the General Bridge Act of 1946.

Federal Aviation Administration

The FAA indicated its intent to participate as a cooperating agency for the preparation of this EIS during the scoping period. The FAA has a responsibility to assess the aviation and environmental impacts of the Proposed Action on Ellington Field. This includes analysis of potential changes to the Ellington Field ALP. If requested by the owner of the Ellington Field, which is the City of Houston, the FAA has to decide whether to approve a change to the ALP to accommodate the Proposed Action because it would cross two edges of the airport. In addition, to release the land in the RPZ, FAA has to decide whether to release the affected airport property from the City of Houston's obligations under the grants that FAA gave to the City to purchase the land (i.e., grant assurances contained in grant agreements). The land in the southeast corner

of the airport that the Proposed Action would cross was deeded to the City by the U.S. General Services Administration (GSA) as surplus land. The surplus land has a deed restriction that requires the FAA to determine whether a non-aviation use would have an adverse effect on the airport. FAA would determine whether the ALP approval and release of property would be appropriate pursuant to 49 U.S.C. 47151-47153 (formerly known as the Surplus Property Act), 49 U.S.C. 47107(c)(2)(B), 49 U.S.C. 47107(a)(16), and any other applicable Federal law, regulation, and applicable FAA Orders.

National Aeronautics and Space Administration

NASA indicated its intent to participate as a cooperating agency for the preparation of this EIS during the scoping period. NASA expressed interest in becoming a cooperating agency because it will need to decide whether to grant an easement for the Proposed Action to cross NASA's access road between the Sonny Carter Training Facility, which contains NASA's Neutral Buoyancy Laboratory (NBL), and Ellington Field, which NASA uses for training and other flights.

1.6.3 Other Agencies

U.S. Environmental Protection Agency (USEPA)

USEPA has broad oversight and implementing responsibility for many Federal environmental laws, including the Clean Air Act (CAA), Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Superfund Amendment and Reauthorization Act (SARA), Toxic Substances Control Act (TSCA), and the Resource Conservation and Recovery Act (RCRA). USEPA also provides guidance on compliance with certain Executive Orders (EOs), including EO 12898 on Environmental Justice, EO 11990 on the Protection of Wetlands, and EO 11988 on Floodplain Management. Under Section 309 of the CAA, 42 U.S.C. 7609, USEPA reviews and comments on the environmental impacts of major Federal actions for which an EIS is prepared under NEPA. The USEPA's Office of Federal Activities, which is responsible for reviewing EISs, evaluates the quality of analysis in the EIS and the extent of the proposal's impact on the environment. USEPA also announces the availability of the Draft EIS in the *Federal Register*. SEA will consider the Agency's comments on this Draft EIS in the Final EIS.

Advisory Council on Historic Preservation (ACHP)

The National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their actions on historic and cultural resources. Under the NHPA, the Board consults with the appropriate State Historic Preservation Officer (SHPO) and the ACHP. For this Proposed Action, the Board has consulted with the SHPO at the Texas Historical Commission. The ACHP is an independent Federal agency created by the NHPA. It is responsible for advocating consideration of historic values in agency decision making, issuing regulations to implement Section 106 of the NHPA, and reviewing Federal programs and policies to further historic preservation. SEA will provide the Draft EIS to ACHP and the Texas Historical Commission (THC) for review.

ACHP is also responsible for ensuring that projects are in compliance with other requirements concerning historic and cultural resources. These include the Archaeological Resource Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), American Indian Religious Freedom Act (AIRFA), and EOs requiring consultation with Native American Tribes.

U.S. Fish and Wildlife Service (USFWS)

USFWS is the Federal agency with primary expertise in fish, wildlife, and natural resources issues. USFWS is responsible for implementation of the Endangered Species Act (ESA) and, through its regional offices, for consulting with other Federal agencies on potential impacts to threatened and endangered species.

Under Section 7 of the ESA, USFWS is responsible for the review of Federal agency actions and potential impacts to threatened and endangered species. The USFWS may issue a determination, in the form of a biological opinion, that details projected impacts to threatened and endangered species. The Board is responsible for initiation of Section 7 consultation with the USFWS. SEA will provide the Draft EIS to the USFWS for review.

U.S. Army Corps of Engineers (USACE)

USACE, under Section 404 of the CWA of 1977, has jurisdiction over activities that result in the discharge of dredge or fill material into waters of the United States, including lakes, rivers, streams, oxbows, ponds, and wetlands. Activities that affect these systems require a permit from the USACE. Construction of the Proposed Action and Alternatives would likely impact waters of the United States and, therefore, the Applicants would have to obtain a Section 404 permit prior to commencing project construction.

In addition, USACE is responsible for activities that may affect navigable waters of the United States, pursuant to Section 10 of the Rivers and Harbors Act of 1899. Section 10 requires any entity proposing to perform work or place a structure in a navigable water to obtain a Department of Army permit prior to commencing the activity. Construction of the Proposed Action and Alternatives would involve crossing navigable waters of the United States and, therefore, the Applicants would have to obtain a Section 10 permit prior to commencing project construction. SEA will provide the Draft EIS to USACE for review.

National Marine Fisheries Service (NMFS)

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requires Federal agencies to consult with the NMFS on Federal actions that may adversely effect Essential Fish Habitat (EFH) (50 CFR 600.905-930). The MSFCMA requires coordination between the Board and the NMFS in achieving EFH protection, conservation, and enhancement. The NMFS has requested an assessment of the potential effect of the Bayport Loop Build-Out on EFH in the area of the Proposed Action and Alternatives. SEA has prepared a Finding and EFH Assessment relative to the Proposed Action, which is included in Appendix J. SEA will provide the Draft EIS to NMFS for review.

1.7 SCOPING AND PUBLIC INVOLVEMENT

On October 1, 2001, SEA served and distributed the Notice of Intent to Prepare an EIS to approximately 489 citizens, elected officials, Federal, state, and local agencies, and interested organizations. SEA also initiated a toll-free project hotline. On November 26, 2001, SEA served and distributed the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments, to approximately 526 citizens, elected officials, Federal, state, and local agencies, and interested organizations. The distribution encompassed the communities surrounding the Proposed Action and Alternatives and the communities along the UP lines connecting the Proposed Action to New South Yard. SEA placed notices of the scoping meetings in several community newspapers and the *Houston Chronicle*. SEA also provided public service announcements to several Spanish-speaking radio stations. Due to the change in Proposed Action routing from New South Yard to the CMC Dayton Yard that took place after the scoping meetings and publication of the Final Scope, SEA notified Federal, state, and local officials and placed notices in newspapers to describe the Proposed Action to those affected by the new proposed route. SEA has made this DEIS available at libraries and other repositories along the new proposed route.

The scoping meetings were held in the afternoons and evenings on January 14 and 15, 2002, at the Pasadena Convention Center. SEA used a workshop format to allow attendees to provide comments to and ask questions of SEA and its third-party independent consultant, ICF Consulting of Fairfax, VA. The 189 people who attended the scoping meetings included citizens, representatives of organizations, elected officials, and officials from Federal, state and local agencies. Attendees submitted 21 comment sheets during the meetings and 20 attendees provided oral comments to a court reporter. SEA received 698 (including 32 in Spanish) additional scoping comment forms, form letters, and letters raising environmental issues as a result of the scoping period that ended on February 1, 2002. At that time, SEA had received 14 calls to the toll-free hotline (none in Spanish). Thirteen of those callers asked for information and one provided comments. As discussed further below, SEA extended the comment period.

SEA received comments that the format of the scoping meetings did not provide an opportunity to present oral testimony in front of the Agency in the same way that oral testimony could be provided at a public hearing. However, other comments also indicated that the scoping meetings were helpful in providing an opportunity for the public to become directly involved and to interact with the Agency in the development of the Scope of Study for the EIS. Comments also objected to the location of the scoping meetings. The comments stated that the meetings should have been held closer to the areas that would be affected by the Proposed Action, in particular Houston's East End. Comments noted that the location of the meetings did not allow full participation in the scoping process by all of the affected parties. Finally, comments requested that SEA hold public meetings after the release of the Draft EIS. Comments stated that the public meetings should be held within a reasonable time after the Draft EIS is issued and not on or near any major holidays. Suggested future meeting locations included schools in the southeast or east ends of Houston and/or in Clear Lake City.

The NEPA implementing regulations do not require public hearings for scoping. SEA chose the workshop format for the same reasons that the CEQ recommends that format. CEQ's Scoping

Guidance⁷ discusses the drawbacks of holding a large meeting and states that they often become ‘events’ where grandstanding substitutes for substantive comments. Discussion is often limited and dialogue is difficult. Although interest groups for future discussion are identified, participants may not obtain detailed responses. Also, the setting of a large public meeting may create unnecessary tension between opposing groups. In contrast, workshops provide greater opportunity for more intensive discussion between the Agency and attendees. Issues of concern and specific questions may be addressed in more detail. Considering these factors, SEA determined that a workshop format would provide the best exchange of information between SEA and the public. SEA held the scoping meetings at a location accessible to a large number of areas that would potentially be affected by the project. Additionally, during the scoping period, SEA did not receive many comments directly requesting a meeting in the east end of Houston such that SEA would consider another meeting warranted. SEA will consider the comments received regarding future public meetings when it begins planning for the public comment period on the Draft EIS.

Comments also suggested that SEA extend the length of the scoping comment period beyond the original deadline of February 1, 2002. Comments stated that many people did not receive information about the project in time to attend the scoping workshops or organize a response by the original comment deadline. Comments stated that inadequate information was made available to the public and that they were not properly informed of the details of the Proposed Action and Alternatives. Some of these commenters indicated that they had been misled about the proposed rail routes or had not been included in the public involvement process. However, other comments noted that thorough scoping and substantial public participation had already occurred. Comments requested more accessible information, greater outreach efforts to populations living near the affected rail lines, and clear consideration of the commenters’ concerns.

At the request of these commenters and several elected officials, SEA extended the comment period for an additional 30 days to March 14, 2002, to provide the public sufficient opportunity to explore Alternatives to the proposed route and raise issues pertinent to scoping. SEA published the notice in the *Federal Register* on February 13, 2002, and distributed it to 650 citizens, elected officials, Federal, state, and local agencies, and interested organizations. SEA conducted additional public involvement activities for the communities along the UP mainline between the proposed rail line and New South Yard. Project information was translated into Spanish and made available to communities and community leaders who live along these existing UP lines. At the end of the extended scoping period, SEA had received 198 additional comment letters, forms, and form letters and 21 calls to the toll-free hotline (none of the letters or calls were in Spanish). Six of these callers asked for information and 15 provided comments.

As part of the environmental review process to date, SEA has conducted broad public outreach activities to inform the public about the Proposed Action and to facilitate public participation. Over the course of the original scoping comment period and its extension, project information was translated into Spanish and made available to communities and community leaders who live

⁷ CEQ, *Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping*, April 30, 1981 and attached *Scoping Guidance*.

along the Glidden Subdivision and the GH&H line, inviting comments and questions in Spanish to the toll free hotline. SEA distributed several hundred of these documents in Spanish to numerous community groups. SEA placed notices in local newspapers, submitted public service announcements to local radio stations, and mailed project information to area citizens as well as elected and government officials representing potentially affected communities. SEA consulted with and will continue to consult with Federal, state, and local agencies, affected communities, and all interested parties to gather and disseminate information about the proposal. Appendices A and B provide further information on the Scoping process and public outreach conducted by SEA. The Final Scope, contained in Appendix A, discusses the issues raised in comments provided on the Draft Scope of Analysis.

1.8 EIS ORGANIZATION AND FORMAT

This EIS is organized consistent with NEPA and CEQ regulations at 40 CFR 1502.10. It is intended to provide clear and concise information on the Proposed Action and Alternatives to agency decision-makers and the public. The EIS describes the proposed project, Alternatives, the existing environment, and the potential environmental impacts associated with the Proposed Action and Alternatives. Chapters and specific topics within each chapter are outlined in the Table of Contents and numerically coded to aid the reader in locating items of interest. Tables and figures are listed numerically by the chapter in which they occur. Appendices are denoted with alphabetic characters and are included at the end of the EIS.

The following is a list and a brief description of the components of the EIS:

Executive Summary

The Executive Summary provides a brief description of the purpose and need for the project, the Alternatives developed and evaluated in the EIS, and the potential environmental impacts associated with each Alternative. The Executive Summary also contains the conclusion and recommendations concerning preferred Alternatives and mitigation measures developed to reduce the potential environmental impacts.

List of Acronyms and Abbreviations

Glossary

The Glossary provides definitions of technical, NEPA, or agency-related terms that may be unfamiliar to the reader.

Chapter 1

Purpose and Need for Action - This chapter describes the purpose and need that the Proposed Action is intended to serve, a brief description of the Proposed Action, the various agencies involved in preparation of the EIS and their responsibilities, the process of developing the scope of the EIS analysis and the issues to be evaluated, and the EIS organization.

Chapter 2

Proposed Action and Alternatives - This chapter describes the Proposed Action, Alternatives to the Proposed Action, the No-Build Alternative, and the No-Action Alternative that are studied in detail in the EIS, and Alternatives considered but eliminated from detailed analysis. It also compares the environmental impacts of the Proposed Action and Alternatives based on the information and analysis presented in Chapter 3, Affected Environment, and Chapter 4, Environmental Consequences.

Chapter 3

Affected Environment - This chapter describes the existing natural and human resources within the proposed project area. It is divided into environmental resource categories and outlines regulatory requirements, analysis methods, assumptions, and data sources for each environmental resource category.

Chapter 4

Environmental Consequences - This chapter provides the methodology and results of the analysis of potential environmental impacts associated with the Proposed Action, and the Alternatives to the Proposed Action, the No-Build Alternative, and the No-Action Alternative. The results address direct and indirect impacts and their magnitude.

Chapter 5

Cumulative Effects - This chapter briefly describes other past, present, and reasonably foreseeable future actions in the proposed project area that were considered to contribute to overall environmental impacts. It provides the results of analysis of the impacts of these projects, when considered cumulatively with the Proposed Action and Alternatives.

Chapter 6

Mitigation - This chapter describes, by environmental resource category, the recommended mitigation measures to be implemented to minimize the potential environmental impacts of the Proposed Action and Alternatives.

Chapter 7

Short-Term Use Versus Long-Term Productivity of the Environment - This chapter discusses the relationship between the short-term uses of the environment for the Proposed Action and Alternatives versus impacts on long-term productivity of the environment.

Chapter 8

Irreversible and Irretrievable Commitment of Resources - This chapter discusses the irreversible and irretrievable commitment of resources that would be required, should the Proposed Action or any of the Alternatives be implemented.

Chapter 9

List of Preparers - This chapter provides a list of the names and qualifications of the preparers of the EIS.

Chapter 10

List of Agencies, Organizations, and Persons to Whom Copies of the EIS are Sent.

References

The References section includes citations of all the published sources of information used in the preparation of the EIS.

Appendices

The Appendices consist of material prepared in connection with the EIS and any material that substantiates the analyses and conclusions presented in the EIS. These materials include public participation materials (Appendix A), Agency consultations (Appendix B), discussions of analysis methods and results (Appendix C through M), and information requests to and responses from the Applicants (Appendix N).

1.9 REQUEST FOR COMMENTS ON THE DRAFT EIS

The public and any interested parties are encouraged to make written comments on all aspects of this Draft EIS. SEA will consider all comments in preparing the Final EIS, which will include responses to all substantive comments and SEA's final conclusions on potential impacts and SEA's final recommendations. All comments must be submitted within the comment period, which will close January 27, 2003. When submitting comments on the Draft EIS, please be as specific as possible and substantiate your concerns and recommendations.

Please mail written comments on the Draft EIS to the address below.

Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

To ensure proper handling of your comments, please mark your submission:

Attention: Dana White
Section of Environmental Analysis
Environmental Filing FD 34079

Due to delays in the delivery of mail currently being experienced by Federal agencies in Washington, D.C., SEA encourages that comments be faxed to 1-866-293-4979. Faxed comments will be given the same weight as mailed comments; therefore, persons submitting comments by fax do not have to also send comments by mail.

Further information about the project can be obtained by calling SEA's toll-free number at 1-888-229-7857 (TDD for the hearing impaired 1-800-877-8339).

This Draft EIS is also available on the Board's website at: www.stb.dot.gov.

1.10 PUBLIC MEETINGS

In addition to receiving written comments on the Draft EIS, SEA will host two public meetings. At each meeting, SEA will give a brief presentation and interested parties may then make oral comments. SEA will have a transcriber present at each meeting to record the oral comments in either English or Spanish. Written comments may also be submitted at the meetings. Meetings will be held at the facility locations, dates, and times:

Pasadena Convention Center
7902 Fairmont Parkway, Pasadena, TX
January 14
7-9 p.m.

Cesar E. Chavez High School
8501 Howard Drive, Houston, TX
January 15
7-9 p.m.